IN THE SUPREME COURT OF MISSOURI

MISSOURI MUNICIPAL LEAGUE,	)	
	)	
Appellant,	)	
	)	
vs.	)	**Case No. SC94493**
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon Beetem, Judge

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

Normally, in a case involving a judgment on the pleadings, there should be no disagreement about the proper contents of a statement of facts. Respondent cannot ignore, however, the blatant and repetitive argument contained in MML's statement. For example, a "fact" is said to be that HB 103 is, "draconian and unconstitutional". (App.'s Brief p.7). It is claimed to be a "fact" on appeal that "the statute's inherent vagueness combined with the total lack of any implementing regulations, leaves municipalities with no idea how to comply." (App.'s Br. p. 8). Again, "implementing HB 103 could grind municipal enforcement to a halt." (App.'s Br. p. 11). "Citizens and municipalities throughout Missouri will pay the price if HB 103's vague, unregulated and unconstitutional provisions are enacted." (App.'s Br. p. 14). None of these "facts" are accompanied by a citation to the Legal File. Of the thirteen pages in MML's Statement of Facts, only pages 3 through 7 and eleven through thirteen come close to satisfying the mandates of Rule 84.04(c).

One of the most important parts of Rule 84.04(c) requires the inclusion of those facts necessary to the disposition of the issues raised by Appellant's brief. Glaringly, despite the claims that the passage of HB 103 violated two sections of the Missouri Constitution concerning legislative procedure, the court is not told what the original title was, what the final title was, what the original bill sought to achieve or what amendments were made along the way.

However, rather than burdening the Court with a lengthy recitation of facts, Respondent refers the court to Appellant's petition (L.F. 3) and Respondent's answer (L.F. 74). Original HB 103, L.F. 70, and the finally passed version (L.F. 16) are attached to the petition. The necessary relevant facts are that original HB 103 was titled as relating to ATV's and utility vehicle use on municipal highways (L.F. 70) and the final version was "relating to transportation." Exhibit A, L.F. 16. As enacted, HB 103 included provisions concerning commercial driving privileges, texting on highways, other traffic enforcement provisions and conveyance of state land for highway construction.

ARGUMENT

MISSOURI MUNICIPAL LEAGUE LACKS ASSOCIATIONAL LEGAL STANDING BECAUSE ITS MEMBERS HAVE NO LEGALLY PROTECTABLE INTEREST THAT WOULD PERMIT THEM TO BRING THIS ACTION IN THEIR OWN RIGHT

Standing is a question of law. Review of whether a party has sufficient standing to challenge the constitutionality of a statute is therefore de novo. *Missouri State Medical Ass'n v. State*, 256 S.W.3d 85, 87 (Mo. 2008).

MML asserts in a footnote to its brief (page 3) that the State cannot question its standing to raise these claims because it did not appeal. That argument ignores the rule that the State cannot appeal unless it is aggrieved by the court's judgment. Sec. 512.020, RSMo 2000. *City of North Kansas City v. K.C. Beaton Holding Co.,*

LLC, 417 S.W.3d 825, 833 (Mo. App. 2014). Because the State prevailed on the merits on all of MML's claims the state was not aggrieved.

"Standing can be raised by the court sua sponte. For this reason, [a challenge to] standing cannot be waived." *CACH, LLC v. Askew,* 358 S.W.3d 58, 61 (Mo. banc 2012) (citing *Farmer v. Kinder,* 89 S.W.3d 447, 451 (Mo. banc 2002)). A party seeking relief has the burden to establish that it has standing to maintain its claim. *Borges v. Missouri Public Entity Risk Management Fund,* 358 S.W.3d 177, 181 (Mo.App. W.D. 2012). The issue of MML's standing is properly before the court.

Associational standing requires that the members of the association have standing to sue in their own right[1]. *Hunt v. Washington State Apple Advertising Comm'n.,* 432 U.S. 333, 343 (Mo. 1977). Missouri has adopted this requirement. *Missouri Outdoor Advertising Ass'n. Inc. v. Missouri State Highway's and Transportation Com'n,* 826 S.W.2d 342,344 (Mo. 1992). "To assert standing, a plaintiff must have a legally protectable interest. . . . A legally protectable interest exists only if the plaintiff is affected directly and adversely by the challenged action or if the plaintiff's interest is conferred statutorily." *St. Louis Ass'n of Realtors v. City of Fergueson,* 354 S.W.3d 620, 623 (Mo. 2011).

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[1] The test also requires that the interests sought to be protected be germane to the organization's purpose and that the claim or relief not require the presence of individual members. *Id.*

MML HAS NO STANDING TO ASSERT A SEPARATION OF POWERS CLAIM

The "MML" cannot show that it has a legally protected interest at stake. *Lebeau v. Commissioners of Franklin County,* 422 S.W.3d 284, 288 (Mo. 2014.) No member of the Missouri Municipal League is directly and adversely affected by Section 303.342.2, RSMo. Supp. 2013 (sometimes referred to herein as "HB 103"). Missouri's municipal courts are part of the judicial branch of government. Whether the functions of MML's members are considered executive or legislative, they could never be considered judicial. As MML acknowledges, the municipal courts are divisions of the circuit courts. Mo. Const. Art. V, Sec. 27(2) (d). MML does not represent any circuit court or division of the circuit court. Thus, it has no standing to assert any claim related to a municipal court's jurisdiction or its power to hear and decide any cases.

Nor can any municipality that belongs to MML suffer any direct and adverse effect or any enforceable loss if a municipal court loses its jurisdiction. Municipalities are not prevented from enacting ordinances or from prosecuting violations by HB 103. Mo. Const. Art. V, Sec. 23 and Sec. 479.080.2, RSMo. 2000 requires that the associate division of any circuit court hear municipal ordinance violations upon request. Nor does any municipality suffer any loss of revenue from fines. All fines collected by an associate division must be remitted at least

monthly to the municipal treasury. *Id.* Therefore, MML cannot show that it has a legally protectable interest at stake. *See Lebeaau,* 422 S.W.3d at 288.

MML HAS NO STANDING TO ASSERT A RIGHT UNDER THE OPEN COURTS PROVISION OF THE MISSOURI CONSTITUTION

More specifically, neither MML nor any of its members is a person, natural or legal. *City of Chesterfield v. Director of Revenue,* 811 S.W.2d 375 (Mo. 1991). Protection under the equal protection and due process clauses of our Constitution extends only to "persons". *Id.* The "open courts" provision in Art. I, Sec. 14 is essentially a second due process clause in the Missouri Constitution. *Missouri Reliance for Retired Americans v. Department of Labor and Industrial Relations,* 277 S.W.3d 670, 675 (Mo. 2009).

MML LACKS STANDING TO ASSERT A CLAIM FOR VIOLATION OF ART. III, SEC. 21 OR 23

Finally, MML and its members lack standing to bring the constitutional claims under Art. III, Sec. 21 and 23. The crucial question here is whether any member of MML has a legally protectable interest that is harmed by HB 103. As discussed above they suffer no financial loss of fine revenue[2] or the ability to enforce any local ordinances. MML and its members are not directly impacted by

[2] MML specifically states that it does not challenge the reduction of the traffic violation reduction cap imposed by HB 103. (App. Br. P. 6, FN 3).

provisions concerning municipal court jurisdiction and have no interest more specific that any person in the public as a whole. For these reasons, MML and its members have no standing to raise claims under Art. III, Sec. 21 or 23. Thus, their interest in whether the legislative process in enacting HB 103 was flawed is too attenuated and general to confirm legal standing.

STANDARD OF REVIEW

> "On appeal from the trial court's grant of Respondents' motion for judgment on the pleadings, we review the allegations of Appellants' petition to determine whether the facts pleaded therein are insufficient as a matter of law. The party moving for judgment on the pleadings admits, for purposes of the motion, the truth of all well pleaded facts in the opposing party's pleadings. The position of a party moving for judgment on the pleadings is similar to that of a movant on a motion to dismiss; i.e., assuming the facts pleaded by the opposite party to be true; these facts are, nevertheless, insufficient as a matter of law. A trial court properly grants a motion for judgment on the pleadings if, from the face of the pleadings, the moving party is entitled to a judgment as a matter of law."

State ex rel. Nixon v. American Tobacco Co., Inc., 34 S.W.3d 122, 134 (Mo. 2000).

This standard applies to all points on this appeal except for the standing question.

HB 103 DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE (RESPONDING TO APPELLANT'S POINT I)

MML's brief combines two different constitutional grounds for attack on HB 103 in the same Point Relied On. For that reason, the State will respond in this section to the argument that HB 103 violates the separation of powers doctrine. The next section will address the argument that HB 103 violates the right of the Missouri Supreme Court to regulate practice and procedure in the courts.

The separation of powers doctrine codified in Art. II, Sec. 1 of the Missouri Constitution, although fundamental to our form of government, is not absolute. The history of our form of government reflects the natural and probably healthy (albeit sometimes painful) tensions between the branches resulting from the doctrine's application to particular issues. To say that the courts of Missouri have jurisdiction vested by the Constitution to decide all "cases and matters," *Webb v. Wyciskalla,* 275 S.W.3d 249, 253 (Mo. 2009), is not to say that the legislative branch has no proper constitutional role in determining conditions for or limitations on the exercise of a court's subject matter jurisdiction. Various statutes establish such conditions and limitations. The legislative branch

requires payment of cost deposits for access to the courts.[3] The legislative branch has removed entire classes of cases from the courts such as workers' compensation. Undoubtedly, the legislature may provide a new cause of action for resolution in the court system and presumably could abolish an already existing cause of action as well. *Kilmer v. Mun,* 17 S.W.3d 545 (Mo. 2000).

Moreover, MML's argument is based on the mistaken premise that municipal courts are, as is the case for circuit and appellate courts, specifically established and created by the Missouri Constitution. There is, however, no municipal court counterpart to Art. V, Sec. 1. Although the Constitution grants municipal courts the power to hear ordinance violation cases, that power is not exclusive but is shared with associate circuit courts. Art. V, Sec. 23. Moreover, the very existence of *any* municipal court is dependent upon the Missouri General Assembly, that is, the legislative branch. *Id*. HB 103 neither expands nor restricts the jurisdiction of municipal courts.

It is perhaps ironic that MML complains that a municipal court's jurisdiction could be impaired by its own members "executive branch" action of failing to file the financial report required by HB 103 or failing to remit excessive traffic violation revenue. MML's members are totally in control of whether HB

[3] Subject, of course, to due process considerations under the open court's provision of the Constitution.

103 adversely affects a municipal court. Whether the separation of powers doctrine applies at all to a municipal corporation is an interesting question that does not need resolution. Tellingly, MML makes no argument that the state legislature has violated the separation of powers doctrine by either requiring an annual financial report or limiting the amount of fine revenue a city may keep from traffic violations. Their complaint is only that a municipal court may be prohibited from hearing cases if the city violates HB 103.

There are a number of ways that the state legislature controls municipal courts within the confines of the Constitution. The General Assembly sets the qualifications for municipal judges and also determines their method of selection. *See* Mo. Const. Art. V, Sec. 23; Sec. 479.040 RSMo. The General Assembly also establishes the court costs that may be charged by municipal courts. Sec. 479.260, RSMo. 2000. In fact, the court costs provisions demonstrate that there is often no bright line between these two branches since the legislature also sets the court costs for the circuit and appellate courts. See Chapter 478, RSMo. 2000. Another example is the right to appeal. The Supreme Court determines the manner and method for handling appeals through its rule making power, but the legislature determines whether any right to appeal exists and what can be appealed.

MML's conclusion that HB 103 violates the separation of powers doctrine by encroaching upon the reserved judicial power is unwarranted by either

practice or precedent. The potential impact of HB 103 upon any particular municipal court's jurisdiction is indirect at best. HB 103 has no effect on the practice or procedure of municipal courts. No municipal court is required to handle any individual case in any different manner. The only way that HB 103 can affect a municipal court's jurisdiction is if a separate branch of local government fails to perform its duties. Whether temporary loss of the power to hear cases is the best method for enforcing the municipality's duties is a policy choice, not a constitutional one. The sad irony of MML's argument is that on one hand it portrays a municipal court as an independent branch of government and with the next breath argues that it is indistinguishable from the municipal government—a city's mere stepchild and agent for the collection of revenue. MML is correct that enforcement of HB 103 may present unanswered questions, but whether it creates chaos is within the sole power of MML's members. There will be no chaos if each municipality files its required report using any reasonable interpretation of possibly unclear terms and remits the amount so calculated to be due.

HB 103 DOES NOT IMPAIR ACCESS TO THE COURTS BY ANY MUNICIPALITY OR ITS CITIZENS

(RESPONDING TO APPELLANT'S POINT II)

MML asserts both that HB 103 violates either its members' (municipal corporations) right to access to the courts under Art I, Sec. 14 or that it violates its members' citizens' right to access. They will be addressed together.

ART. I, SEC. 14 DOES NOT GUARANTEE ACCESS TO ANY PARTICULAR COURTHOUSE

The open courts provision is aimed at protecting the rights of persons to seek remedies for injuries by means of substantive claims created elsewhere by the law. *Weigand v. Edwards,* 296 S.W.3d 453, 461 (Mo. 2009). It is not a source for a remedy itself and it does not bar reasonable limitations or restrictions on any remedy. *Id* at 461-62. Neither defendants charged with violating municipal ordinances nor citizens of a municipality are denied any remedy by HB 103. Even assuming that a municipal corporation is a "person" for purposes of Art. I., Sec. 14 and that MML has standing to complain for its members' citizens, neither those citizens nor the municipality itself are denied either enforcement of its municipal traffic ordinances or the fine revenue generated by those violations. Though the close proximity of a city courthouse hearing cases in the evenings may be convenient for a city's citizens, that convenience does not invoke any provision of the Missouri Constitution.

THIS COURT SHOULD AFFIRM THE TRIAL COURT BECAUSE HB 103 DID NOT VIOLATE ART. III, SEC. 21 BECAUSE THE ADDITIONS TO THE TRULY AGREED AND FINALLY PASSED VERSION OF HB 103 ARE GERMANE TO ITS ORIGINAL PURPOSE

(RESPONDING TO APPELLANT'S POINT IV)

Art. III, Sec. 21 prohibits any bill from being "so amended in its passage through either house as to change its original purpose. "*Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. 2012); Mo. Const. Art. III, Sec. 21. "Original purpose is the general purpose, 'not the mere details through which and by which that purpose is manifested and effectuated.'" *Missouri State Med. Ass'n,* 39 S.W.3d at 839-40; *citing State ex rel. McCaffery v. Mason,* 155 Mo. 486, 55 S.W. 636, 640, (Mo. 1900). This constitutional provision is "designed to prevent the enactment of amendatory statutes in terms so blind that legislators themselves... [would be]…deceived in regard to their effect," and the public would be prevented from being apprised of the changes in the law. *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. 1982); *citing State v. Ludwig*, 322 S.W. 2d 841, 847 (Mo. 1959).

Although this Court has many times recognized that the key term in Art. III, Sec. 21 is "purpose," it has also sometimes confused purpose with subject. *See Lincoln Credit Co. v. Peach*, 322 S.W.2d at 847 ("The restriction is against the introduction of matter which is not germane to the object of the legislation or which is unrelated to its original subject.") The purpose of a statute is different

from the subject matter. The subject is defined as "the matter of concern over which something is created." On the other hand, purpose is "objective, goal, or end." Black's Law Dictionary, p. 1250, 7th ed.

"Alterations that bring about an extension or limitation of the scope of the bill are not prohibited; even new matter is not excluded if germane." *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327 (Mo. 2000) (internal citation omitted). "Article III, section 21 was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made." *Missouri State Med. Ass'n,* 39 S.W.3d at 840 (internal citation omitted)

"We interpret 'procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation.'" *Id.*; *citing Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. 1994). "The burden of establishing [a statute's] unconstitutionality rests upon the party questioning it." *State v. Hampton,* 653 S.W.2d 191, 194 (Mo. 1983).

MML argues that the additions the legislature made to the original version of HB 103 are not germane to the original purpose because they are related to more than simply all-terrain vehicles and utility vehicles. (App. Br. at 37-38.) In fact, MML goes so far as to list several provisions that are not related to either all-terrain or utility vehicles. (App. Br. at 39.) However, the original purpose, or

desired objective of the statute, was to regulate the use of state-regulated highways. Each of the provisions which MML cites to from Truly Agreed and Finally Passed ("TAFP") HB 103 relates to regulating transportation on state highways, the original purpose of the bill.

Additionally, by passing TAFP HB 103, the legislature created a new cause of action in the form of the reporting provision that MML has challenged through this appeal. The legislature further established the remedy for that cause of action: the loss of jurisdiction for the municipal court of a municipality if that municipality does not comply with the reporting requirement. If each of the additional provisions were severed, it would cause an inhibition to the normal legislative process that the original purpose provision was not intended to cause. *See Missouri State Med. Ass'n*, 39 S.W.3d at 840. It is illogical and contrary to the intent of the original purpose provision to require the legislature to pass a second bill detailing the requirements for collecting fines assessed from traffic violations and a third bill requiring a report to ensure compliance. Therefore, HB 103 does not violate Mo. Const. Art. III, Sec. 21 because the original purpose has not changed from its first introduction to is final passage.

THIS COURT SHOULD AFFIRM THE TRIAL COURT BECAUSE TAFP HB 103 DOES NOT VIOLATE ART. III, SEC. 23 BECAUSE THE TITLE OF THE BILL CLEARLY DESCRIBES THE CORE PURPOSE OF HB 103 AND EACH OF THE PROVISIONS ARE RELATED TO THAT SAME CORE PURPOSE (RESPONDING TO APPELLANT'S POINT V)

HB 103 does not violate the Mo. Const. Art. III, Sec. 23. Although Plaintiff characterizes this as the "clear title" provision, it is more accurately the single subject provision of the Missouri Constitution. One purpose of the single subject provision is to ensure that all of the provisions of a bill "fall within or reasonably relate to the general core purpose of the proposed legislation." *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. 1994). "A party asserting that a bill has violated the single subject limitation in article III, section 23 has the burden to prove that the bill clearly and undoubtedly has more than one subject." *Missouri Health Care Ass'n v. Attorney General of the State of Missouri*, 953 S.W.2d 617, 622 (Mo. 1997).

"To determine the core purpose of the bill, the Supreme Court first looks to the title of the bill." *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 328-29 (Mo. 2000). "Since there can be many versions of a bill before it is agreed on and enacted, and thus many titles for the same bill, only the title for the enacted bill is relevant." *See Mo. State Med. Ass'n v. Mo. Dept of Health*, 39 S.W.3d 837, 839-41 (Mo. 2001). This Court has long held that there is nothing inherently wrong

with changing the title of a bill, as this can facilitate an organized and more efficient approach to the consideration and passage of legislation. *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. 1984).

A second purpose is to inhibit the legislative process of "logrolling." *Hammerschmidt*, 877 S.W.2d at 101. Logrolling is a process in which "several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage." *Stroh Brewery Co. v. State*, 954 S.W. 2d 323, 325-26 (Mo. 1997).

A provision of a bill does not violate the single subject provision if the matter is germane, connected, and congruous to the core purpose of the statute. *Hammerschmidt*, 877 S.W.2d at 102. To determine if a bill contains more than one subject, it is necessary to determine "if all provisions of a bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose" *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. 1984); (*citing State ex rel. Williams v. Marsh,* 626 S.W.2d 223, 228 (Mo. 1982)). The provisions of a bill do not have to fairly relate to each other, just to the subject of the bill. *C.C. Dillon Co.*, 12 S.W.3d 328-29.

MML argues that TAFP HB 103 violates Art. III, Sec. 23 in two ways. First, it argues that the title of the bill is too broad. This court has stated that where the title of a bill is under inclusive or too broad and amorphous to be meaningful, it is unconstitutional. *State v. Salter*, 250 S.W.3d 705, 709-10 (Mo.

2008); "The only cases where this Court has found a title to be too broad and amorphous are those in which the title could describe the majority of all the legislation that the General Assembly passes." *State v. Salter*, 250 S.W.3d at 109-10 (Mo. 2008)(internal citations omitted).

The title "Related to Transportation" is not too broad of a title. It does not describe all of the legislation the general assembly could pass. It provides fair notice to legislators and the public alike that the provisions of that bill will relate to the subject of transportation. In fact, this court has found the title "Relating to Transportation," did not violate the clear title requirement. *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322 (Mo. 2000). Additionally, this Court has found that very similar titles to the bill in question were not too broad: "Relating to Health Services," *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 841 (Mo. 2001); and "Relating to Environmental Control," *Corvera Abatement Tech., Inc., v. Air Conservation Comm'n*, 973 S.W.2d 851, 861-62 (Mo. 1998).

MML next argues that the various provisions of TAFP HB 103 do not fairly relate to the subject of the bill as expressed in the title. MML lists for the Court several subjects that it does not believe are germane to this bill. Those subjects include ATV Regulation, driver's license qualifications, license plate emblems, and emergency responder safety. (App. Br. p. 41). Each of those provisions relates to various aspects of transportation. In *C.C. Dillon*, this Court found that provisions related to billboards displayed by the interstate fairly related to the

subject articulated through the title "Related to Transportation." 12 S.W.3d at 328-29. The provisions in TAFP HB 103, including those listed by MML in its brief and those listed above, are just as related to transportation as highway billboards. Therefore, TAFP HB 103 does not violate Art. III, Sec. 23 and this Court should affirm the trial court's judgment.

CONCLUSION

For the reasons stated the State of Missouri requests this court's decision affirming the decision of the Cole County Circuit Court.

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned hereby certifies that this brief complies with the limitations set forth in Rule 84.06(b) and contains 4,880 words as calculated pursuant to the requirements of Rule 84.06(b)(2).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically via Missouri CaseNet, and served, on March 17, 2015, to:

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